

Attachment B

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1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF COLUMBIA
3 -----X
4 ASSOCIATION OF FLIGHT ATTENDANTS Civil Action No. 05-1036
5 Plaintiffs
6 v.
7 PENSION BENEFIT GUARANTY CORP.,
8 Defendant,
9 -----X Washington, D.C.
10 wednesday, Aug. 10, 2005
11 1:30 P.M.

11 TRANSCRIPT OF MOTION
12 BEFORE THE HONORABLE ELLEN SEGAL HUVELLE
13 UNITED STATES DISTRICT JUDGE

14 APPEARANCES:

15 For the Plaintiffs: CARMEN R. PARCELLI, ESQUIRE
16 Guerrieri, Edmond, Clayman &
17 Bartos, P.C.
18 1625 Massachusetts Ave., N.W.
19 Washington, D.C. 20001
20 202-624-7400

21 Court Reporter: Lisa Walker Griffith, RPR
22 U.S. District Courthouse
23 Room 4802-A
24 Washington, D.C. 20001
25 202-898-1068

23 Proceedings recorded by mechanical stenography, transcript
24 produced by computer.

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1 For the Defendant: CHARLES FINKE, ESQUIRE
2 JACQUELYN GRAY, ESQUIRE
PAULA J. CONNELLY, ESQUIRE
Pension Benefit Guaranty Corp.

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21 MS. PARCELLI: But Your Honor, Mr. Finke said
22 previously in his colloquy with you that if we were right on
23 this and they had predetermined it, then that would be a
24 violation of ERISA.

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25 THE COURT: But preordained is one thing, versus

1 having a pretty firm understanding of what the economics are
2 that you're looking at.

3 Okay. You are assuming predetermination is wrong and
4 having a fair understanding that where you are going is wrong,
5 too. It is going to be tough.

6 MS. PARCELLI: I wouldn't want to leave you with the
7 impression that that is the entire case here either, because
8 surely we have this aspect that, the settlement agreement ended
9 up being this rationale for terminating. You have to feel like
10 you were set up. This was something that the agency decided it
11 was going to enter into, for its own reasons, that quite frankly
12 are not the reasons under 4042.

13 Then once they get into 4042, they go well, it's too
14 good. We set up this situation where, under 4042, we're going
15 to find that you should be terminated. So there is that aspect
16 to it as well.

17 THE COURT: Is there any hope at the union of settling
18 this? In the context of the bankruptcy -- I read the judge's
19 opinion in -- it must have been Illinois --

20 MS. PARCELLI: Yes, Judge Der-Yeghiayan.

21 THE COURT: He made this point, and I echo it, you
22 have a major problem with the statute. It's written in a way
23 that they're not your representatives, the agency. If their
24 balance sheet continues to be the way it is, it is just like
25 looking at the FDIC and the savings and loan industry. If that

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1 is an issue, their solvency and their ability to survive can
2 trump anything almost. I don't understand it, but that's what
3 the statute says.

4 MS. PARCELLI: Your Honor, to distinguish, what we're
5 doing in that case is challenging United's action. United has a
6 clear obligation under the law, under the Railway Labor Act, to
7 negotiate with us about these matters. And also a clear
8 obligation under section 1113 in the bankruptcy code not to go
9 out and alter our collective bargaining agreement without
10 engaging us. So those aspects we think are clearly distinct.

11 THE COURT: But the judge in Illinois talks about the
12 ERISA statute, he's not talking about the bankruptcy statute.
13 He's saying, and his point is extremely well taken, and the
14 congressmen that have supported you see it. There is a problem,
15 to the extent you embrace your argument, with the statute. He's
16 talking about the ERISA statute, he's not talking about United's
17 actions under the bankruptcy.

18 Okay, Mr. Finke, can you respond on this regulation
19 thing?

20 MR. FINKE: Yes, Your Honor.

21 THE COURT: What are we talking about?

22 MR. FINKE: We never have looked at these regs as
23 requiring some sort of formal determination, decision making
24 process.

25 THE COURT: About settlements?

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1 MR. FINKE: About settlements. If -- what they do is
2 they simply state the conditions in which we can consider